

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

ELKLAND HOLDINGS, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:14-CV-15043
	)	Judge Thomas E. Johnston
EAGLE MINING, LLC,	)	
	)	
Defendant.	)	

**PLAINTIFF ELKLAND HOLDINGS, LLC'S  
MOTION TO EXCEED PAGE LIMIT**

Now comes Plaintiff Elkland Holdings, LLC ("Elkland"), by its counsel, the Tinney Law Firm PLLC, and pursuant to Local Rule 7.1(a)(2), hereby moves this Court for an order granting Elkland leave to file a brief in opposition to Defendant's Motion to Dismiss or, in the Alternative, Motion to Stay or Transfer Venue ("Opposition") in excess of twenty (20) pages. Rule 7.1 of the Local Rules of Civil Procedure allows the length of a memorandum to exceed twenty (20) pages "for good cause shown," and Elkland asserts the following constitutes such good cause:

1. On April 18, 2014, Elkland filed its Petition to Partially Vacate and Modify Arbitration Award ("Petition"). **Dkt. No. 1.** An Amended Petition addressing jurisdictional issues was filed on May 19, 2014. **Dkt. No. 7.** The Petition explains in detail the basis for vacating, in part, and modifying Arbitrator Frederic K. Conover's award in favor of Eagle Mining, LLC ("Eagle") of \$23,382,521.00.

2. On June 2, 2014, Eagle filed its Motion to Dismiss or, in the Alternative, Motion to Stay or Transfer Venue and Memorandum in Support ("Memorandum"). **Dkt. Nos. 13 and 14.**

3. Eagle's Memorandum is 20 pages and includes another 81 pages of exhibits.

4. Eagle's Memorandum advances both procedural arguments, *i.e.*, the "first-to-file" rule requires dismissal, stay, or transfer, and substantive arguments, *i.e.*, Elkland's Petition fails to state a claim upon which relief could be granted.

5. While captioned as a motion to dismiss, Eagle's Memorandum goes beyond the factual allegations and legal authorities raised by Elkland's Petition. Rather, Eagle's Memorandum discusses the substantive merits of Elkland's requested relief and attempts to introduce a substantial amount of additional facts, testimony, and briefs into the record.

6. Local Rule 7.1(a)(2) limits a response brief to 20 pages absent leave of Court and a showing of good cause.

7. To adequately present its arguments in a manner that will be helpful to the Court and to explain why the myriad of arguments, alleged facts, documents, and authorities raised in Eagle's Memorandum are deficient, Elkland respectfully requests leave to present an additional eight (8) pages in its Opposition.

8. It is not Elkland's intent to undermine the purposes of this Court's page limitation. Elkland attempted to focus the arguments in its Opposition and has further shortened its brief to the shortest length it reasonably believes possible under the circumstances. Elkland does not intend to introduce a significant number of exhibits through its Opposition, does not intend to repeat the allegations made in its Petition (other than to the extent necessary to address Eagle's arguments that Elkland did not plead facts stating a claim), and does not intend to go outside the scope of the issues presented by Eagle's Memorandum.

9. Elkland's request will not prejudice Eagle, which will have an opportunity to respond to Elkland's arguments through its reply brief.

10. Elkland makes this motion in good faith and without any improper motive.

For the reasons articulated herein, Elkland respectfully requests that this Court permit it to exceed the prescribed 20 page limit, for good cause shown, and grant leave for Elkland to file a 27 page Opposition brief. A proposed Order is attached as Exhibit "A."

Dated this 17<sup>th</sup> day of June, 2014

Respectfully submitted,

/s/ John H. Tinney, Jr.

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*Attorneys for Plaintiff, Elkland Holdings, LLC*

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	)	
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of June, 2014, I filed a true and correct copy of "Elkland Holdings, LLC's Motion to Exceed Page Limit" with the Clerk of the Court using the CM/ECF system, and sent a true and correct copy to counsel for Defendant via electronic and U.S. Mail at the following addresses:

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/s/ John H. Tinney, Jr.  
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